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3 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
4 **IN AND FOR THE COUNTY OF APACHE**

5
6 IN RE THE GENERAL
7 ADJUDICATION OF ALL RIGHTS
8 TO USE WATER IN THE LITTLE
9 COLORADO RIVER SYSTEM AND
10 SOURCE.

CONTESTED CASE

NO. CV 6417-202

**ORDER FOR SPECIAL
PROCEEDINGS FOR
CONSIDERATION OF THE
AMENDED AND RESTATED WHITE
MOUNTAIN APACHE TRIBE
WATER RIGHTS
QUANTIFICATION AGREEMENT**

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15 **Contested Case Name:** *In re Amended and Restated White Mountain Apache Tribe
Water Rights Quantification Agreement.*

16 **HSR Involved:** None.

17 **Descriptive Summary:** Order of Judge Mark Brain, approving application of Settling
18 Parties, filed April 17, 2014, to commence special proceedings to consider the
19 Amended and Restated White Mountain Apache Tribe Water Rights Quantification
20 Agreement dated as of November 1, 2012 ("WMAT Agreement"), which permanently
21 resolves the claims for water rights of the White Mountain Apache Tribe and its
22 Members, and the United States acting in its capacity as trustee for the White Mountain
23 Apache Tribe and its Members.

24 **Date of Filing:** April 29, 2014.

25 **Number of Pages:** 10, without attachments. Attachment A [8]; Attachment B [11];
26 Attachment C [4].

27 This matter came before the Court on April 22, 2014, upon the application of the White
Mountain Apache Tribe; the United States of America; the Salt River Valley Water Users'
Association; the Salt River Project Agricultural Improvement and Power District; the Arizona
City of Show Low; and the Arizona Water Company (these parties hereinafter referred to as

1 the “WMAT Agreement Parties”) for an order for special proceedings, pursuant to the
2 Administrative Order issued by the Supreme Court of Arizona on September 27, 2000
3 (“Administrative Order”).¹

4 Entry of an order for special proceedings is requested for the Court to consider a
5 stipulation among the WMAT Agreement Parties,² which sets forth the terms of the WMAT
6 Agreement, and incorporates and attaches as exhibits thereto copies of: (1) the WMAT
7 Agreement permanently resolving all claims for water rights of the White Mountain Apache
8 Tribe and its Members, and the United States acting in its capacity as trustee for the White
9 Mountain Apache Tribe and its Members;³ and (2) a proposed final judgment and decree
10 adjudicating the water rights of the White Mountain Apache Tribe, and the United States
11 acting in its capacity as trustee for the White Mountain Apache Tribe, as established in the
12 WMAT Agreement.⁴ The Court, having considered the Application for Special Proceedings
13 *ex parte*, as is authorized by paragraph B(1) of the Administrative Order, finds the following:

14 1. The WMAT Agreement Parties, who are parties to this adjudication (the “Little
15 Colorado River Adjudication”), have reached a proposed water rights quantification
16 agreement permanently resolving all claims for water rights of the White Mountain Apache
17 Tribe and its Members, and the United States acting in its capacity as trustee for the White
18 Mountain Apache Tribe and its Members, whose claimed water rights are subject to
19 determination in this adjudication. Congress ratified the WMAT Agreement in passing the
20 White Mountain Apache Tribe Water Rights Quantification Act of 2010, Public Law.111-291,
21 Title III, 124 Stat. 3063, 3073 (2010) (“WMAT Act”).

22 2. The Application for Special Proceedings satisfies the requirements of paragraph
23 B(1) of the Administrative Order issued by the Arizona Supreme Court as it contains: (1) the

24 ¹ The application shall be referred to hereinafter as the “Application for Special Proceedings.”

25 ² The stipulation, attached as Exhibit A to the Application for Special Proceedings, shall be
26 referred to hereinafter as the “Stipulation.”

27 ³ The proposed WMAT Agreement is attached as Exhibit A to the Stipulation.

⁴ The proposed final judgment and decree shall be referred to hereinafter as the “proposed
Final Judgment and Decree” and is attached as Exhibit B to the Stipulation.

1 Stipulation of the WMAT Agreement Parties, which sets forth the terms of the WMAT
2 Agreement and incorporates and attaches as exhibits thereto copies of the WMAT Agreement
3 and the Proposed Final Judgment and Decree adjudicating the water rights of the White
4 Mountain Apache Tribe and its Members, and the United States acting in its capacity as
5 trustee for the White Mountain Apache Tribe and its Members, as established in the WMAT
6 Agreement; (2) a request that the Court enter an order approving the WMAT Agreement, the
7 Stipulation and the Proposed Final Judgment and Decree; (3) a description of the special
8 circumstances that prevent the consideration of the WMAT Agreement in the normal course
9 of the Little Colorado River Adjudication; (4) a proposed order to commence the special
10 proceedings, attaching a description of the terms of the WMAT Agreement, a copy of the
11 Administrative Order and a proposed Notice of Settlement; and (5) information indicating the
12 location of copies of the WMAT Agreement and supporting documents available for review.

13 3. The WMAT Agreement Parties have satisfied paragraph A of the Supreme
14 Court's Administrative Order which specifies the conditions warranting special procedures to
15 consider the WMAT Agreement:

16 a. The WMAT Agreement involves the claimed water rights of the White
17 Mountain Apache Tribe and its Members, which are the subject of statement of claimant
18 number 39-91441, as amended filed by the United States for the benefit of the White
19 Mountain Apache Tribe and its Members, and statement of claimant numbers 39-95155 and
20 39-95156 filed by the White Mountain Apache Tribe on behalf of itself and its Members in
21 this action. The claims of the United States acting in its capacity as trustee for the White
22 Mountain Apache Tribe and its Members, and of the White Mountain Apache Tribe on behalf
23 of itself and its Members, are within the jurisdiction of the Court under the principles of
24 *Arizona v. San Carlos Apache Tribe of Arizona*, 463 U.S. 545 (1983) and *United States v.*
25 *Superior Court et al.*, 144 Ariz. 265, 697 P.2d 658 (1985).

1 b. The WMAT Agreement Parties include the White Mountain Apache Tribe,
2 the United States, and other claimants in the Little Colorado River Adjudication whose
3 claimed water rights are adverse to those of the White Mountain Apache Tribe.

4 c. The WMAT Agreement permanently resolves the claims for water rights of
5 the White Mountain Apache Tribe, an Indian tribe, and its Members, and the United States
6 acting in its capacity as trustee for the White Mountain Apache Tribe and its Members. A
7 description of the water rights of the White Mountain Apache Tribe, and the United States
8 acting in its capacity as trustee for the White Mountain Apache Tribe, as established in the
9 WMAT Agreement, is set forth in Attachment A to this Order, which description is
10 incorporated by reference herein.

11 d. The WMAT Agreement has been confirmed by Congress in the WMAT Act,
12 but Congress' confirmation is conditioned upon approval of the proposed Final Judgment and
13 Decree, an exhibit to the WMAT Agreement, by the Court.

14 e. There are special circumstances preventing the consideration of the WMAT
15 Agreement, the Stipulation and the Proposed Final Judgment and Decree in the normal course
16 of the Little Colorado River Adjudication. Section 309(d)(1)(F) of the Act requires that the
17 Proposed Judgment be approved in this proceeding no later than April 30, 2021. If the
18 Proposed Final Judgment and Decree is not approved in this proceeding on or before April 30,
19 2021, the Act will be repealed as of May 1, 2021, any action authorized to be taken by the
20 Secretary pursuant to any provision of the Act will be void, and the WMAT, its Members and
21 the United States on their behalf will retain all claims for water rights and injury to water
22 rights that are the subject of the WMAT Agreement. *See* WMAT Act, Section 309(d)(2).
23 Under the normal course of the Little Colorado River Adjudication, the claims for water rights
24 of the White Mountain Apache Tribe and its Members would not be considered by the Court
25 prior to April 30, 2021. In addition, the rural water supply project authorized under the
26 WMAT Agreement cannot be constructed until the WMAT Agreement and the Proposed
27 Judgment and Decree become fully enforceable. Early consideration and approval of the

1 WMAT Agreement by this Court would satisfy this condition for commencement of
2 construction of the project and avoid unnecessary cost increases, which would occur with the
3 passage of time.

4 4. The claimed water rights of the WMAT Agreement Parties, other than the White
5 Mountain Apache Tribe on behalf of itself and its Members and the United States acting in its
6 capacity as trustee for the White Mountain Apache Tribe and its Members, will not be
7 adjudicated in the special proceedings requested by the WMAT Agreement Parties; rather,
8 these claimed water rights will be adjudicated in the due course of the Little Colorado River
9 Adjudication.

10 5. The WMAT Agreement, which permanently resolves all of the claims for water
11 rights of the White Mountain Apache Tribe and its Members, and of the United States acting
12 in its capacity as trustee for the White Mountain Apache Tribe and its Members, is a lengthy
13 and complex agreement involving many parties, many separate documents and attachments,
14 exchanges of water, and both monetary and nonmonetary consideration. The Hydrographic
15 Survey Report (“HSR”) concerning present and potential water uses of the White Mountain
16 Apache Tribe and its Members, which would be prepared by the Arizona Department of Water
17 Resources (“ADWR”) in the normal course of the Little Colorado River Adjudication to assist
18 the Court and parties, has not been completed and is not even scheduled to be completed.
19 Without the expert assistance of ADWR, it will be difficult for the Court and other parties to
20 the Little Colorado River Adjudication to understand and evaluate the proposed WMAT
21 Agreement. As a consequence, it is appropriate for the Court to order ADWR to prepare a
22 factual analysis and technical assessment of the WMAT Agreement as is authorized by
23 paragraph B(3)(f) of the Supreme Court’s Administrative Order.

24 6. Because of the complexity of the special proceedings, the number of parties
25 expected to be involved, and the time anticipated for pre-hearing conferences and hearings, it
26 is also appropriate for the Court to refer the consideration of the WMAT Agreement, the
27 Stipulation and the proposed Final Judgment and Decree to the Special Master appointed

1 under the provisions of Section 45-255, Arizona Revised Statutes Annotated, as authorized by
2 paragraph D(4) of the Supreme Court's Administrative Order and Rule 53 of the Arizona
3 Rules of Civil Procedure.

4 NOW, THEREFORE, IT IS ORDERED as follows:

5 1. The Application for Special Proceedings to consider the WMAT Agreement, the
6 Stipulation and the proposed Final Judgment and Decree, which permanently resolve all of the
7 claims for water rights of the White Mountain Apache Tribe and its Members, and of the
8 United States acting in its capacity as trustee for the White Mountain Apache Tribe and its
9 Members, is granted. The conditions warranting special procedures have been satisfied. The
10 WMAT Agreement Parties shall serve by mail copies of their Application for Special
11 Proceedings and this Order upon all persons listed in the Court-approved mailing list for the
12 Little Colorado River Adjudication.

13 2. The special proceedings with respect to the WMAT Agreement, Stipulation and
14 proposed Final Judgment and Decree shall be conducted in accordance with the
15 Administrative Order Providing for the Approval of Federal Water Rights Settlements,
16 Including Those of Indian Tribes, issued by the Arizona Supreme Court on September 27,
17 2000, which is attached to this Order as Attachment B.

18 3. The Court will consider the WMAT Agreement, Stipulation and proposed Final
19 Judgment and Decree under the criteria enumerated by the Arizona Supreme Court in
20 paragraph D(6) of its Administrative Order. Except to the extent that the express terms of the
21 WMAT Agreement, the Stipulation and the Proposed Final Judgment and Decree provide
22 otherwise, if the Court approves the Stipulation and the WMAT Agreement, and enters the
23 Proposed Final Judgment and Decree adjudicating the water rights of the White Mountain
24 Apache Tribe and its Members, and of the United States acting in its capacity as trustee for the
25 White Mountain Apache Tribe and its Members, the Proposed Final Judgment and Decree will
26 be binding upon all parties to the Little Colorado River general stream adjudication.
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1 4. ADWR shall file with the Court no later than Friday, July 25, 2014, a factual
2 analysis and technical assessment of the WMAT Agreement. ADWR's report shall including
3 the following: (1) a review of the terms of the WMAT Agreement; (2) a summary of the
4 statements of claimant filed by or on behalf of the WMAT and its Members; (3) a brief
5 description of the history, physical characteristics, and natural resources (including an estimate
6 of the arable acreage) of the White Mountain Apache Tribe and its reservation, emphasizing
7 those facts, events, and plans which may be important in ascertaining the water rights of the
8 reservation; (4) a determination of whether there is a reasonable basis to conclude that the
9 water rights of the White Mountain Apache Tribe and its Members, and the United States
10 acting in its capacity as trustee for the White Mountain Apache Tribe and its Members, as
11 established in the WMAT Agreement and the Proposed Final Judgment and Decree, from
12 sources subject to the jurisdiction of the Court,⁵ are no more extensive than the water rights
13 that the White Mountain Apache Tribe acting on behalf of itself and its Members, and the
14 United States acting in its capacity as trustee for the White Mountain Apache Tribe and its
15 Members, would be able to prove to a degree of reasonable probability at the trial of these
16 claimed rights in the due course of the Little Colorado River Adjudication; (5) the probable
17 depletion of water resources in the Little Colorado River system and source as a result of the
18 WMAT Agreement; (6) the probable impact of the WMAT Agreement upon categories of
19 other claimants in the adjudication; (7) the probable impact of the WMAT Agreement upon
20 the groundwater uses on or in the vicinity of the reservation; and (8) other important impacts
21 or consequences that might result from the WMAT Agreement. The WMAT Agreement
22 Parties are ordered to meet with ADWR and to provide ADWR with information and

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24 ⁵ The Arizona Supreme Court's February 19, 2010 Order in the Gila River Adjudication, Case
25 Nos. WC-07-0001-IR and WC-07-0003 (consolidated), which approved the Amended and
26 Restated Gila River Indian Community Water Rights Settlement Agreement, establishes that
27 only water sources within the river system and source subject to the Court's jurisdiction must
be considered as part of the Administrative Order's Paragraph D(6)(B) analysis. *See* February
19, 2010 Order, ¶23.

documents necessary for ADWR to complete its factual analysis and technical assessment (including information comparing the WMAT Agreement to the amount of water the White Mountain Apache Tribe on behalf of itself and its Members, and the United States acting in its capacity as trustee for the White Mountain Apache Tribe and its Members, could reasonably prove at a trial of its claimed water rights). Upon filing the report with the Court, ADWR is ordered to serve a copy of the report upon each person appearing on the Court-approved mailing list for the Little Colorado River Adjudication.

5. After the filing of the ADWR report, the WMAT Agreement Parties shall present a program in a meeting to provide interested parties in the Little Colorado River Adjudication and the public with information about the WMAT Agreement. The program will include a statement that the program has been ordered by the Court, a disclaimer indicating that the WMAT Agreement Parties' interests in the WMAT Agreement may be adverse to the interests of other parties in the Little Colorado River Adjudication, a description of the terms and conditions of the WMAT Agreement, an announcement of the availability of the ADWR factual analysis and technical assessment, and an announcement of the date objections to the WMAT Agreement must be filed. At the program, the WMAT Agreement Parties shall make copies of this Order (including attachments) available to those persons who are present. The meeting will be held at 7:00 p.m. (MST) on Wednesday, August 6, 2014, at the Show Low City Council Chambers, 181 North 9th Street, Show Low, Arizona.

6. The WMAT Agreement Parties shall serve by first-class mail a notice upon all claimants (and all assignees and transferees of claimants, to the extent they appear in ADWR's records) in the Little Colorado River general stream adjudication, notifying them of the application to approve the WMAT Agreement involving the water rights of the White Mountain Apache Tribe; the pendency of this special proceeding; the time, date, and location of the informational meeting described in the preceding paragraph; and advising them where complete copies of the application for special proceedings and this Order may be found. The Court approves the use of the Notice of Settlement attached hereto as Attachment C. The

1 Settling Parties shall publish a copy of the Notice of Settlement in two newspapers of general
2 circulation within the geographical area encompassed by the Little Colorado River
3 Adjudication at least once a week for three consecutive weeks, beginning no later than
4 fourteen (14) days after the date of entry of this Order.

5 7. Objections to the application to approve the WMAT Agreement shall be filed with
6 the Clerk of the Court in and for Apache County no later than Monday, September 8, 2014.

7 8. Any WMAT Agreement Party who is a claimant in the Little Colorado River
8 Adjudication may file a response to an objection no later than Monday, September 29, 2014.

9 9. The WMAT Agreement Parties shall promptly provide both ADWR and the Special
10 Master with complete copies of the WMAT Agreement, including copies of all attachments
11 and documents referred to or incorporated therein, a copy of the WMAT Act, and a copy of
12 any printed congressional report concerning that federal legislation. ADWR shall make its set
13 of these documents available for public inspection and copying at its headquarters during its
14 normal business hours. The WMAT Agreement Parties shall also provide a complete copy of
15 the WMAT Agreement, including copies of all attachments, and a copy of the WMAT Act, to
16 the offices of the Clerks of the Superior Court in every Arizona County located within the
17 Little Colorado River System and Source promptly upon issuance of the Order for Special
18 Proceedings.

19 10. The pretrial orders of the Court and the Rules for Proceedings Before the Special
20 Master apply to these special proceedings to the extent that they are consistent with the
21 Supreme Court's Administrative Order.

1 DATED this 29 day of April, 2014.

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4 Hon. Mark H. Brain
5 Judge of the Superior Court
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Attachment A

Description of the Proposed Water Rights and Other Terms of the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement

As Represented to the Little Colorado River Adjudication Court by the WMAT Parties

1. The Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement (“WMAT Agreement”) resolves the claims for Water Rights of the White Mountain Apache Tribe (“WMAT”), on behalf of itself and its Members, and of the United States acting in its capacity as trustee for the WMAT and its Members. The rights of the WMAT, and the United States acting in its capacity as trustee for the WMAT and its Members, as agreed upon in the WMAT Agreement and set forth in the proposed stipulation and proposed judgment and decree, are summarized in this Description of Proposed Water Rights.¹

2. The capitalized terms used in this Description of Water Rights are defined as stated in the WMAT Agreement.

3. The Water Rights described in Section 4 of this Description of Water Rights shall be held in trust by the United States on behalf of the WMAT as provided in Section 305(a)(1) of the Act and shall not be subject to forfeiture or abandonment pursuant to Section 305(a)(2) of the Act.

¹The Description of Water Rights set forth in this Attachment A is not intended to supersede the terms of the WMAT Agreement among the WMAT Parties. In the event any aspect of the description contained herein varies from or conflicts with the terms of the WMAT Agreement, the terms of the WMAT Agreement are controlling and should be consulted.

4. Pursuant to paragraphs 4.0 and 5.0 of the WMAT Agreement, and the Proposed Judgment and Decree to be entered by the Gila River Adjudication Court², the WMAT and the United States acting in its capacity as trustee for the WMAT shall have the permanent right to Divert for Use on the Reservation and on Off-Reservation Trust Land the Maximum Annual Diversion Amount of 71,000 AFY from all sources of Surface Water on the Reservation and on Off-Reservation Trust Land within the Salt River Watershed, provided that the Maximum Annual Depletion Amount of all such Diversions shall not exceed 25,800 AFY. Paragraphs 4.0 and 5.0 of the WMAT Agreement, and the Proposed Judgment and Decree to be entered by the Little Colorado River Adjudication Court³, further provide that up to 7,000 AFY of the 71,000 AFY Maximum Annual Diversion Amount and up to 4,000 AFY of the 25,800 AFY Maximum Annual Depletion Amount specified in the preceding sentence may be Diverted and Depleted from sources of Water within the Little Colorado River Watershed.

5. As a component of the Water Right described in Section 4 hereof and as provided in Paragraphs 4.0 and 6.0 and Subparagraph 5.4 of the WMAT Agreement, the WMAT and the United States acting in its capacity as trustee for the WMAT shall have the permanent right to Divert Groundwater from any location within the Reservation and on Off-Reservation Trust Land, subject to the Maximum Annual Diversion Amounts and the Maximum Annual Depletion Amounts specified in Section 4 hereof.

6. For purposes of calculating Diversions and Depletions as provided in the WMAT Agreement:

² The Proposed Judgment and Decree to be entered by the Gila River Adjudication Court is attached as exhibit 12.9.6.1 to the WMAT Agreement.

³ The Proposed Judgment and Decree to be entered by the Little Colorado River Adjudication Court is attached as exhibit 12.9.6.2 to the WMAT Agreement and is referred to hereinafter as the Proposed LCR Judgment and Decree.

A. All Water Diverted or Depleted on the Reservation or on Off-Reservation Trust Land by Members or pursuant to any agreement or authorization by the WMAT or the United States acting in its capacity as trustee for the WMAT shall be considered to be Diverted or Depleted by the WMAT or the United States acting in its capacity as trustee for the WMAT.

B. All Diversions of Water in each Year within the Reservation and on Off-Reservation Trust Land, together with all WMAT CAP Water used by the WMAT outside of the Reservation and outside of Off-Reservation Trust land, and all WMAT CAP Water leased to others or exchanged pursuant to Paragraphs 7.0, 9.0 and 10.0 of the WMAT Agreement, shall be counted in determining compliance by the WMAT and the United States acting in its capacity as trustee for the WMAT with the Maximum Annual Diversion Amounts specified in Paragraph 4.0 and Subparagraphs 5.1, 5.2 and 5.3 of the WMAT Agreement. Diversions shall be measured or calculated as provided in Paragraph 11.0 of the WMAT Agreement.

C. All Depletions of Water in each Year from Diversions of Water within the Reservation and on Off-Reservation Trust Land, together with all WMAT CAP Water used by the WMAT outside of the Reservation and outside of Off-Reservation Trust land, and all WMAT CAP Water leased to others or exchanged pursuant to Paragraphs 7.0, 9.0 and 10.0 of the WMAT Agreement, shall be counted in determining compliance by the WMAT and the United States acting in its capacity as trustee for the WMAT with the Maximum Annual Depletion Amounts specified in Paragraph 4.0 and Subparagraphs 5.1, 5.2 and 5.3 of the WMAT Agreement. Depletions shall be measured or calculated as provided in Paragraph 11.0 of the WMAT Agreement.

D. Except as provided in Subparagraph 4.6 of the WMAT Agreement, all Uses of Water on land outside of the Reservation, if and when that land is

subsequently and finally determined to be part of the Reservation through resolution of any dispute between the WMAT and the United States over the location of the Reservation boundary, and any fee land within the Reservation placed into trust and made part of the Reservation, shall be subject to the Maximum Annual Diversion Amounts and the Maximum Annual Depletion Amounts specified in Paragraph 4.0 and Subparagraphs 5.1, 5.2, and 5.3 of the WMAT Agreement.

E. In the event the Maximum Annual Diversion Amounts or the Maximum Annual Depletion Amounts specified in Paragraph 4.0 and Subparagraphs 5.1, 5.2 and 5.3 of the WMAT Agreement are exceeded in any Year by the WMAT or the United States acting in its capacity as trustee for the WMAT, then the Maximum Annual Diversion Amounts or the Maximum Annual Depletion Amounts, as applicable, shall be reduced by the amount of any such exceedance for such Water source in the following Year.

7. The priority date for the administration of the Water Rights of the WMAT and the United States on behalf of the WMAT from the Little Colorado River and its tributaries for Uses on the Reservation shall be November 9, 1871. The priority date for the administration of the Water Rights of the WMAT and the United States on behalf of the WMAT for Uses on Off-Reservation Trust Lands from the Little Colorado River and its tributaries shall be November 4, 1985. Except as provided in Section 18 hereof, upon the entry of the Proposed LCR Judgment and Decree, the Water Rights described in Sections 3, 4 and 5 hereof and this Section 7 shall be binding on all parties to the Little Colorado River Adjudication.

8. The Water Rights of the WMAT and the United States acting in its capacity as trustee for the WMAT as quantified in Paragraph 4.0 of the WMAT Agreement may be used for any Use on the Reservation, including any land finally determined to be part of the Reservation under Subparagraph 4.14 of the WMAT Agreement, or on Off-

Reservation Trust Land; provided, however, that Use of WMAT CAP Water shall be as provided in Paragraph 7.0 of the WMAT Agreement.

9. Surface Water, Groundwater and Effluent purchased or acquired subsequent to the Enforceability Date by the WMAT or the United States acting in its capacity as trustee for the WMAT pursuant to state law from sources outside of the Reservation and outside of Off-Reservation Trust Land shall not be subject to the quantification limits of the WMAT's Water Rights specified in Paragraph 4.0 or Subparagraphs 5.1, 5.2 and 5.3 of the WMAT Agreement.

10. All land held by the United States in trust for the WMAT as Off-Reservation Trust Land and all land within the Reservation shall have only those Water Rights specifically quantified in Paragraph 4.0 of the WMAT Agreement for the WMAT and the United States acting in its capacity as trustee for the WMAT.

11. Reporting.

A. Within thirty (30) days of the inspections of measuring and recording devices required by Subparagraph 11.1.1 of the WMAT Agreement, the WMAT or the United States acting in its capacity as trustee for the WMAT shall file with the Court in the Little Colorado River Adjudication Proceedings or with the Court in the Gila River Adjudication Proceedings, as applicable determined by the location of the point of Diversion of Water to be measured by the particular device, a certified copy of the report by the registered professional engineer or similarly qualified person that sets forth the findings of the inspection and verification that the measuring and recording devices and procedures satisfy industry standards.

B. No later than March 1 of the second Year following the Year in which the Enforceability Date occurs, and on March 1 of each Year thereafter, the WMAT or the United States acting in its capacity as trustee for the WMAT shall file with the Court a report, in the form attached as exhibit 11.2 to the WMAT

Agreement or as may otherwise be required by the Court, showing: (1) all amounts of Water, by source, Diverted on the Reservation and on Off-Reservation Trust Land under Paragraphs 5.0 and 6.0 of the WMAT Agreement in the Year immediately preceding the Year in which the report is filed; (2) all Depletions of Water, by source, measured or calculated as provided in Subparagraphs 11.3, 11.4 and 11.5 of the WMAT Agreement; (3) all amounts of WMAT CAP Water delivered to others in exchange for the Diversion of Water on the Reservation and on Off-Reservation Trust Land by WMAT from sources located within the Salt River Watershed; (4) all amounts of WMAT CAP Water recharged; (5) all amounts of WMAT CAP Water leased to others; and (6) all amounts of WMAT CAP Water otherwise used by the WMAT.

C. Any Party may petition the Court to modify the form set forth in exhibit 11.2 to the WMAT Agreement to ensure accurate reporting of the WMAT Water Diversions and Depletions. Any other Party may object to such petition.

12. Except as set forth in the WMAT Agreement and the Act, the benefits realized by the WMAT and its Members under the WMAT Agreement and the Act shall be in full satisfaction of all claims of the WMAT and its Members, and the United States acting as trustee for the benefit of the WMAT and its Members, for Water Rights and Injury to Water Rights under Federal, State, or other law with respect to the Reservation and Off-Reservation Trust Land.

13. Except as provided in Subparagraph 12.6.1(i) and 12.7.1(f) of the WMAT Agreement, the WMAT and the United States acting in its capacity as trustee for the WMAT shall not: (1) object to the usage of any well located outside the boundaries of the Reservation or the Off-Reservation Trust Land in existence on the Enforceability Date; or (2) object to, dispute or challenge after the Enforceability Date the drilling of any well or the withdrawal and Use of Water from any well in the Little Colorado River Adjudication Proceedings or in any other judicial or administrative proceedings.

14. Nothing in the Proposed LCR Judgment and Decree, the WMAT Agreement or the Act recognizes or establishes any right of a Member to Water on the Reservation or on Off-Reservation Trust Land. Any entitlement to Water for Use on lands within the exterior boundaries of the Reservation and Off-Reservation Trust Land shall be satisfied out of the Water resources described in Section 4 hereof, except as provided in Section 9 hereof.

15. Except for Use of WMAT CAP Water as provided in Paragraph 7.0 of the WMAT Agreement, no Water available for Use by the WMAT or by the United States acting in its capacity as trustee for the WMAT under the WMAT Agreement and the Act may be sold, leased, transferred or used outside the boundaries of the Reservation or Off-Reservation Trust Land other than pursuant to an exchange.

16. In exchange for the benefits realized under the WMAT Agreement and as authorized by the Act, the Parties have executed Waivers and Releases of Claims, attached as exhibits 12.1, 12.2, 12.3, and 12.4 to the WMAT Agreement. These Waivers and Releases of Claims are attached as Exhibits B, C, D, and E to the Proposed LCR Judgment and Decree and are by reference incorporated therein. For purposes of this Section 16, the United States shall be acting in the capacities as specifically set forth in each of the waivers referenced herein.

17. The claims of the WMAT and its Members, and the United States in its capacity as trustee for the WMAT and its Members, to Water from the Little Colorado River System and Source are fully, finally and permanently adjudicated by entry of the Proposed LCR Judgment and Decree.

18. Nothing in the Proposed LCR Judgment and Decree or the WMAT Agreement shall be construed to quantify or otherwise affect the Water Rights, claims or entitlements to Water of any Arizona Indian tribe, band or community, or the United States on their behalf, other than the WMAT and the United States acting in its capacity as trustee for the WMAT and its Members.

19. Nothing in the WMAT Agreement shall affect the right of any Party, other than the WMAT and the United States, acting in its capacity as trustee for the WMAT and its Members, to assert any priority date or quantity of Water for Water Rights claimed by such Party in the Little Colorado River Adjudication or other court of competent jurisdiction.

20. The adjudication of Water Rights to the WMAT, and the United States acting in its capacity as trustee for the WMAT, pursuant to the Proposed LCR Judgment and Decree is limited to Water Rights to the Little Colorado River System and Source.

21. The Little Colorado River Adjudication Court will retain jurisdiction over this matter for enforcement of the Proposed LCR Judgment and Decree and the WMAT Agreement, including the entry of injunctions, restraining orders or other remedies under law or equity.

ATTACHMENT B
to the Order

SEP 27 2000

NOEL K. DESSAINT
CLERK SUPREME COURT
BY

IN RE THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN
THE LITTLE COLORADO RIVER SYSTEM
AND SOURCE.

Supreme Court
No. WC-79-0006
[WC-6]

Apache County No. 6417

ADMINISTRATIVE ORDER

Pursuant to Article 6, § 5 of the Arizona Constitution, and A.R.S. § 45-259 the following procedure is adopted for the approval of settlements of Indian water rights or water rights for other federal reservation(s) or federal lands arising in this adjudication:

A. Conditions Warranting Special Proceeding

Settlements of Indian water rights claims or water rights claims for other federal reservations or federal lands may be reviewed and, if appropriate, approved in special proceedings in this general adjudication action, which is subject to Article 9, Chapter 1 of Title 45, Arizona Revised Statutes, under the following conditions:

1. There are special circumstances that prevent the consideration of the settlement agreement in the normal course of the adjudication.

2. The Indian water rights or water rights for other federal reservations or federal lands are the subject of a claim in the general adjudication action that is within the jurisdiction of the court;

3. The Indian water rights claims or water rights claims for other federal reservation(s) or federal lands are the subject of a settlement agreement among one or more Indian tribes (in the case of a

1 settlement of Indian water rights), the United States, and a group of
2 claimants in the general adjudication action whose claims are adverse to
3 the claims of the United States or the Indian tribe(s) (in the case of
4 a settlement of Indian water rights);

5 4. The settlement agreement resolving the Indian water rights
6 claims or water rights claims for other federal reservation(s) or
7 federal lands has been confirmed by an act of Congress or the
8 appropriate federal agency; and

9 5. The terms of the settlement agreement, or the act of Congress
10 or the appropriate federal agency that confirms it, require that the
11 settlement agreement be approved by the general adjudication court or
12 are conditioned upon such approval.

13 B. Application and Order for Special Proceedings

14 1. Special proceedings under this order shall be conducted
15 pursuant to an order for special proceedings issued in the general
16 adjudication action upon the application of one or more of the parties
17 to the settlement agreement. The application may be filed ex parte and
18 shall include:

19 a. the special circumstances that prevent the consideration
20 of the settlement agreement in the normal course of the
21 adjudication;

22 b. a stipulation of the parties to the settlement agreement
23 setting forth the terms of the settlement agreement;

24 c. a request that the general adjudication court enter an
25 order approving the stipulation and the settlement agreement

26 . . .

1 and approving a final judgment adjudicating the Indian water
2 rights or water rights for other federal reservation(s) or
3 federal lands as set forth in the stipulation;

4 d. a proposed form of order directing that special
5 proceedings be conducted to review the stipulation and
6 settlement agreement, and to adjudicate the Indian water
7 rights or water rights for other federal reservation(s) or
8 federal lands as set forth in the stipulation; and

9 e. information indicating the location of copies of the
10 settlement agreement and supporting documents for review by
11 the public.

12 2. Upon the filing of the application, the general adjudication
13 court shall grant the application and enter the order for special
14 proceedings if the court determines that the application satisfies the
15 conditions specified in part A. and the requirements of part B.1 of this
16 order.

17 3. The order for special proceedings shall contain the following
18 statements and directions:

19 a. a statement of the general adjudication court's findings,
20 which may be based upon representations made in the
21 application that the conditions enumerated in part A. are
22 satisfied and that special proceedings are thus warranted;

23 b. a description of the Indian water rights or water rights
24 for other federal reservation(s) or federal lands as agreed
25 upon in the settlement agreement and set forth in the
26 stipulation;

1 c. a statement that special proceedings with respect to the
2 settlement agreement shall be conducted in accordance with
3 this order, a copy of which shall be attached to the order for
4 special proceedings, and a direction that the application and
5 order for special proceedings shall be served forthwith in
6 accordance with part E. of this order;

7 d. a statement of the terms of other general procedural
8 orders, if any, established by the general adjudication court,
9 that are applicable to such special proceedings and consistent
10 with this order;

11 e. a statement that if the general adjudication court
12 approves the stipulation and settlement agreement and enters
13 a final judgment adjudicating the Indian water rights or water
14 rights for other federal reservation(s) or federal lands, the
15 judgment will be binding upon all parties to the general
16 adjudication except to the extent that the express terms of
17 the stipulation and settlement agreement provide that non-
18 signing parties will not be bound by the stipulation and
19 settlement agreement; and

20 f. at the discretion of the general adjudication court, a
21 direction to the Arizona Department of Water Resources ("DWR")
22 to prepare a factual analysis and/or technical assessment of
23 the Indian water rights or water rights for other federal
24 reservation(s) or federal lands subject to the settlement
25 agreement and report to the general adjudication court within
26 such time as may be specified by the court.

1 C. Objections and Responses

2 1. Any claimant in the general adjudication may file thereafter
3 an objection with the general adjudication court asserting that:

4 a. approval of the stipulation and adjudication of the Indian
5 water rights or water rights for other federal reservation(s)
6 or federal lands as set forth in the stipulation would cause
7 material injury to the objector's water rights;

8 b. the conditions enumerated in part A. of this order have
9 not been satisfied;

10 c. the water rights established in the settlement agreement
11 and set forth in the stipulation are not fair, adequate,
12 reasonable, and consistent with applicable law, considering
13 all of the circumstances surrounding the settlement and all of
14 the consideration provided under the settlement; or

15 d. the statutes authorizing and implementing the settlement
16 are unconstitutional or the manner in which they are being
17 applied to implement the settlement is unconstitutional.

18 2. Objections shall include:

19 a. the name and address of the objector;

20 b. a description of the water rights asserted in the
21 objector's claim;

22 c. a statement of the legal basis for the objection, and the
23 specific factual grounds upon which the objection is based;

24 d. a list of any witnesses and exhibits that the objector
25 intends to present at any hearing on the objection;

26 . . .

- 1 e. any request for discovery relating to the objection and a
2 statement as to the need for such discovery; and
3 f. any other information the general adjudication court may
4 require in the order for summary proceedings.

5 3. Objections shall be filed within 45 days after the date of
6 service of the order for special proceedings or, if a DWR report was
7 requested by the general adjudication court, within 45 days of the
8 service of DWR's report.

9 4. Any party to the settlement agreement may file a response to
10 each objection within 40 days after the time for filing objections has
11 expired. The response shall include:

- 12 a. any motion for summary disposition of the objection;
13 b. a list of any witnesses and exhibits that the responding
14 party to the settlement agreement intends to present at any
15 hearing on the objection;
16 c. any request for discovery and a statement as to the need
17 for such discovery;
18 d. any objections to a request for discovery made by the
19 objector;
20 e. a statement that the response is being concurrently served
21 upon parties entitled to service in accordance with this
22 order; and
23 f. any other information the general adjudication court may
24 require in the order for special proceedings.

25 . . .

26 . . .

1 D. Resolution of Objections

2 1. The general adjudication court may conduct hearings to resolve
3 motions for summary disposition of objections or requests for discovery.
4 Requests for discovery shall be granted for good cause shown and, if
5 granted, the court shall establish a schedule within which any permitted
6 discovery shall be completed.

7 2. Motions for summary disposition of objections shall be granted
8 where an objector lacks standing to assert an objection or has asserted
9 no valid legal basis for an objection, where an objection raises no
10 genuine issues of material fact and fails to establish material injury
11 to the objector's water rights, or where the general adjudication court,
12 applying the standards for deciding motions for summary judgment under
13 Ariz. R. Civ. P. 56, finds that summary disposition should be granted.

14 3. Where an objection is not resolved by motion for summary
15 disposition, or where an objection is not the subject of a motion for
16 summary disposition, the general adjudication court shall conduct
17 expedited hearings on the objection.

18 4. The general adjudication court, in its discretion, may refer
19 all or part of the special proceedings provided for by this order to the
20 special master appointed under the provisions of A.R.S. § 45-255. The
21 general adjudication court may request the master's recommendation on
22 the issue of approval, but shall not delegate to the special master the
23 court's power to approve or decline to approve the stipulation and
24 settlement agreement or to enter a judgment accordingly.

25 . . .

26 . . .

1 5. Upon completion of all hearings, if any, on objections, and
2 upon the receipt of the report of the master, if matters have been
3 referred to the master, the general adjudication court shall enter a
4 judgment either approving or disapproving the stipulation and settlement
5 agreement and adjudicating the Indian water rights or water rights for
6 other federal reservation(s) or federal lands as set forth in the
7 stipulation.

8 6. The court shall approve the stipulation and settlement
9 agreement and adjudicate the Indian water rights or water rights for
10 other federal reservation(s) or federal lands as set forth in the
11 stipulation if, after considering any admissible evidence presented, it
12 determines that the parties to the settlement have established by a
13 preponderance of the evidence that:

14 a. the settlement is fair, adequate, reasonable and
15 consistent with applicable law, considering all of the
16 circumstances surrounding the settlement and all of the
17 consideration provided under the settlement. In making this
18 determination, the court may consider in addition to other
19 evidence offered, the statement of claimant filed by the
20 Indian tribe(s) or federal agency and all supporting
21 documentation;

22 b. the water rights claimed by the objector could not be
23 established at a trial on the objector's water rights; the
24 water rights of the objector, if established at trial, would
25 not be materially injured either by the water rights of the
26 Indian tribe(s) or federal agency established in the

1 settlement agreement and set forth in the stipulation, or by
2 the terms of the stipulation and settlement agreement; the
3 objector is bound by the settlement agreement because the
4 objector's interests were adequately represented by a party to
5 the settlement agreement by virtue of the objector's
6 relationship to such party; or under the express terms of the
7 settlement agreement and the stipulation, the objector is not
8 bound and, therefore, both the objector and the Indian
9 tribe(s) or federal agency may pursue their remedies against
10 each other in the adjudication;

11 c. the settlement agreement has been reached in good faith;
12 and

13 d. the statutes authorizing and implementing the settlement
14 are constitutional on their face and as applied to the
15 objector.

16 7. The general adjudication court's judgment approving or
17 disapproving the stipulation and settlement agreement and adjudicating
18 the Indian water rights or water rights for other federal reservation(s)
19 or federal lands as set forth in the stipulation is subject to review by
20 the Arizona Supreme Court pursuant to the Court's Special Procedural
21 Order Providing for Interlocutory Appeals and Certifications adopted
22 June 1, 1994 in this adjudication.

23 E. Service and Notice

24 1. Parties to the settlement agreement shall serve a copy of the
25 application for special proceedings, together with a copy of the order
26 . . .

1 for special proceedings, on all parties on the Court's approved mailing
2 list.

3 2. The parties to the settlement agreement shall provide notice
4 by mail to all claimants in the general adjudication, in a form approved
5 by the general adjudication court, notifying them of the pendency of the
6 special proceeding, advising them where complete copies of the
7 application for special proceedings and the stipulation and settlement
8 agreement will be available for review by the public, and including
9 whatever other information the general adjudication court may require.

10 3. The general adjudication court shall cause a copy of any DWR
11 report to be served as provided in the general adjudication court's Pre-
12 trial Order No. 1.

13 4. A claimant filing an objection shall serve it, and all
14 subsequent filings relating to the objection, upon the parties to the
15 settlement agreement and all parties on the court-approved mailing list.
16 The parties to the settlement agreement shall serve any response to an
17 objection, and all subsequent filings relating to that objection, upon
18 all the objecting parties and all parties on the court-approved mailing
19 list. Service under this part shall be made in accordance with Ariz. R.
20 Civ. P. 5(c)(1).

21 5. The general adjudication court may, in its discretion, require
22 additional service of the application, objection, response, and other
23 pleadings as deemed necessary in a given application, except that the
24 final order of the court entered pursuant to part D.5 of this order
25 shall be served on all parties on the Court's approved mailing list and
26 any other party requesting notice of the Court's final action.

6. The general adjudication court may, for good cause, extend the time limits established in parts B.3.f., C.3., and C.4. of this order.

7. The Clerk of the Superior Court for Apache County shall maintain a docket sheet on which all documents filed in the action shall be entered. Docket sheet entries shall identify each filed document by the name of the party filing the document and the title of the document. The clerk shall update the docket sheet at least biweekly and furnish copies of it on a monthly basis to the Clerks of the Superior Court for all other counties. All clerks shall post in a prominent place a notice of the availability of the docket sheet in a form approved by the general adjudication court.

8. The Clerk of the Superior Court for Apache County shall maintain a separate special proceedings file which shall include copies of all documents filed in special proceedings conducted under this order.

F. Effect on Claims Excluded from Scope of a Settlement

Judicial approval of a settlement will not prejudice any claim to the right to use water expressly excluded from the scope of the settlement agreement.

DATED this 27th day of September, 2000.

Norman Kahut

Thomas A. Zaket
Chief Justice

Attachment C

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF APACHE

IN RE: THE GENERAL
ADJUDICATION OF ALL RIGHTS
TO USE WATER IN THE LITTLE
COLORADO RIVER SYSTEM
AND SOURCE

No. CV 6417-202

NOTICE OF PROPOSED
SETTLEMENT

*In re Amended and Restated White Mountain Apache Tribe Water Rights
Quantification Agreement.*

**IMPORTANT NOTICE FOR CLAIMANTS IN THE LITTLE COLORADO RIVER
ADJUDICATION**

Several parties to the Little Colorado River general stream adjudication ("Little Colorado River Adjudication") have asked the Superior Court to approve the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012 ("WMAT Agreement"), which resolves all claims for water rights of the White Mountain Apache Tribe and its Members, and the United States acting in its capacity as trustee for the White Mountain Apache Tribe and its Members. The claimed water rights of the White Mountain Apache Tribe and its Members, and the United States acting in its capacity as trustee for the White Mountain Apache Tribe and its Members, for the WMAT Reservation (as shown on the map, Attachment A), are subject to adjudication by this Court.

The parties to the WMAT Agreement (the "Settling Parties") include: the White Mountain Apache Tribe; the United States of America; the State of Arizona; the Salt River Valley Water Users' Association; the Salt River Project Agricultural Improvement and Power District; the Roosevelt Water Conversation District; Arizona Water Company; the Arizona Cities of Avondale, Chandler, Glendale, Mesa, Peoria, Phoenix, Scottsdale, Show Low and Tempe; the Arizona Town of Gilbert; the Buckeye Irrigation Company; the Buckeye Water Conservation and Drainage District; and the Central Arizona Water Conservation District.

YOU ARE HEREBY NOTIFIED that the Court is conducting special proceedings to determine whether the WMAT Agreement should be approved. If the Court approves the WMAT Agreement and enters a final judgment adjudicating the water rights claims of the White Mountain Apache Tribe and its Members, and the United States acting in its capacity as trustee for the White Mountain Apache Tribe and its Members, as set forth in a stipulation reflecting the principal terms of the WMAT Agreement, the judgment will be binding upon all

1 parties to the Little Colorado Adjudication, except to the extent that the express terms of the
2 WMAT Agreement, stipulation and judgment provide otherwise.

3 The Court may refer the consideration of the WMAT Agreement to the Special Master,
4 George A. Schade, Jr. After the completion of hearings on the WMAT Agreement, the
5 Special Master will submit to the Court a report setting forth his recommendations on the
6 issue of approval of the settlement. The Court retains its power to approve or decline to
7 approve the WMAT Agreement and to enter a judgment accordingly.

8 The Court has ordered the Arizona Department of Water Resources (ADWR), to
9 prepare a factual analysis and technical assessment of the WMAT Agreement. ADWR's
10 report must be completed by Friday, July 25, 2014. Representatives of ADWR have
11 participated in negotiations that have resulted in the WMAT Agreement.

12 The Court has also ordered the Settling Parties to conduct a program in a meeting to
13 provide interested parties in the Little Colorado River Adjudication and the public with
14 information about the WMAT Agreement. The meeting will be held in Show Low at 7:00
15 p.m. (MST) on Wednesday, August 6, 2014, at the Show Low City Council Chambers, 181
16 North 9th Street, Show Low, Arizona.

17 Once ADWR's report is filed with the Court, claimants in the Little Colorado River
18 Adjudication will have until Monday, September 8, 2014, in which to file any objections they
19 might have to the WMAT Agreement. The Court or Special Master will thereafter schedule
20 hearings on the WMAT Agreement and any objections to the WMAT Agreement.

21 You or your predecessor has filed a statement of claimant for water uses in the Little
22 Colorado River system and source. Your claimed water rights may be affected by the WMAT
23 Agreement. To help you determine whether you should file an objection to the WMAT
24 Agreement, you should review the application filed by the parties to the WMAT Agreement;
25 the Court's Order of April 29, 2014, authorizing these special proceedings; the settlement
26 documents; and, once it has been completed, ADWR's report to the Court. All these materials
27 may be examined during business hours at the Arizona Department of Water Resources, 3550
North Central Avenue, Phoenix, AZ, 85012. Also, copies of the WMAT Agreement may be
examined at the office of the Superior Court Clerk in every Arizona county located within the
Little Colorado River System and Source.

If you decide to file an objection to the WMAT Agreement, you must do so on or
before Monday, September 8, 2014. Any claimant in the Little Colorado River Adjudication
may file an objection with the Adjudication Court asserting that:

- a. Approval of the stipulation setting forth the terms of the settlement, and the proposed final judgment and decree adjudicating the water rights claims of the White Mountain Apache Tribe and its Members, and the United States acting in its capacity as trustee for the White Mountain Apache Tribe and its Members, as set forth in the WMAT Agreement, would cause material injury to the objector's claimed water right;
- b. The conditions described in Administrative Order issued by the Supreme Court of Arizona on September 27, 2000, which warrant this special proceeding, have not been satisfied;
- c. The water rights established in the WMAT Agreement, set forth in the stipulation and adjudicated in the proposed final judgment and decree are not fair, adequate, reasonable and consistent with applicable law, considering all of the circumstances

1 surrounding the settlement and all of the consideration provided under the
2 settlement; or

- 3 d. The statutes authorizing and implementing the settlement are unconstitutional or
4 the manner in which they are being applied to implement the settlement is
5 unconstitutional.

6 Objections must also include:

- 7 a. The name, address, and signature of the objector;
8 b. A description of the water rights asserted in the objector's claim;
9 c. A statement of the legal basis for the objection, and the specific factual grounds
10 upon which the objection is based;
11 d. A list of any witnesses and exhibits that the objector intends to present at any
12 hearing on the objection;
13 e. Any request for discovery relating to the objection and a statement as to the need for
14 such discovery; and
15 f. Any other information the Adjudication Court may require in the order for summary
16 proceedings.

17 Objections must be filed with the Clerk of the Superior Court, Apache County, Attn.:
18 Water Case CV 6417-202, P.O. Box 365, St. Johns, AZ 85936, telephone number (928) 337-
19 7550.

20 If you have any questions concerning the WMAT Agreement and these special
21 proceedings to consider the WMAT Agreement, you may wish to contact an attorney of your
22 choice.

23 This Notice was approved on April 29, 2014, and mailed pursuant to the order of the
24 Court.

25 

26 Hon. Mark H. Brain
27 Judge of the Superior Court

ATTACHMENT A

